

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 96-0484 ITC  
Gross Income Tax — Interstate Commerce Exemption  
For Tax Periods: 1992 through 1994**

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**ISSUES**

**I. Gross Income Tax — Interstate Commerce Exemption**

**Authority:** IC 6-2.1-3-3;  
45 IAC 1-1-119 (1978)

Taxpayer protests the inclusion of certain sales in its Indiana gross income.

**STATEMENT OF FACTS**

Taxpayer is engaged in the business of marketing whole grains (corn, oats, and wheat) and soy beans. The commodities are purchased from local farmers, and then resold, and shipped, to buyers located throughout the United States. The majority of sales are shipped by rail. The grain can be shipped either in railcars belonging to the rail carrier, or in railcars leased to the buyers.

**I. Gross Income Tax — Interstate Commerce Exemption**

**DISCUSSION**

Taxpayer believes income received from grain sales – sales in which the grain was shipped in railcars leased to the buyer – should not have been included in its Indiana gross income. The linchpin of taxpayer's protest is the exemption afforded to income derived from interstate business transactions.

As IC 6-2.1-3-3 provides:

Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income

tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.

Audit has proposed an assessment of gross income tax on receipts from grain sales that taxpayer considered exempt under IC 6-2.1-3-3. For purposes of our analysis, the contested grain transactions can be categorized as either sales shipped by railcar to out-of-state buyers, or sales shipped to the resident buyer's out-of-state customers.

### **Sales shipped by railcar to out-of-state buyers**

Taxpayer makes sales of grain to nonresident buyers – shipping terms FOB point of origin. The grain is delivered to the nonresident buyer by railcar. The railcars are either owned by the rail carrier, or leased by third parties to the nonresident buyers.

Audit found taxpayer's sales of grain – grain delivered in railcars leased to nonresident buyers – to represent taxable outshipments. In support, Audit cites 45 IAC 1-1-119(2)(c), which describes one type of *taxable outshipment*:

Sales to nonresidents where the buyer picks up the goods within the State but does not inspect them until after transport to an out-of-state destination.

Audit reasons that since the nonresident buyers controlled the use of the leased railcars – i.e., determined where the railcars were to be taken, when the railcars were to arrive for pickup, and where the grain would be delivered – the nonresident customers have, in fact, "picked up the goods within the State."

Taxpayer contends such distinctions are irrelevant. A determination of ownership of the railcar, or right of possession (i.e., the existence of a lessee), cannot transform an exempt interstate grain transaction into a taxable outshipment. Rather, taxpayer argues that transport of grain in leased railcars to out-of-state locations represents a nontaxable outshipment.

45 IAC 1-1-119(1)(f) illustrates one type of *nontaxable* transaction:

Sales to nonresidents, where the goods are picked up in Indiana by common carrier which was ordered to do so by the buyer, and delivered to an out-of-state destination.

Nothing presented suggests to the Department that taxpayer's out-of-state buyers have "picked up" goods in Indiana. These transactions are not analogous to those of an out-of-state buyer who drives into Indiana to accept delivery of purchased goods. Additionally, the Department notes that a lease of railcars, alone, should not affect a rail carrier's "common carrier" status.

The Department finds the transactions involving grain sales to out-of-state buyers – transactions in which the grain is delivered in railcars leased to out-of-state buyers – represent nontaxable outshipments. As such, the receipts should be excluded from taxpayer's Indiana gross income pursuant to IC 6-2.1-3-3.

**Sales shipped to resident buyer's out-of-state customers**

Taxpayer made grain sales to an Indiana resident buyer. At the buyer's instructions, taxpayer shipped the grain directly to the buyer's out-of-state customers. Audit determined that the receipts from these sales should have been included in taxpayer's Indiana gross income. As 45 IAC 1-1-119(2)(e) instructs, "[s]ales to Indiana residents where delivery is made by the seller to a nonresident customer of the buyer [is a taxable outshipment]."

Taxpayer maintains that these grain sales should not be subject to tax. From taxpayer's perspective, once the grain is loaded for delivery to the buyer's out-of-state customers, the transactions gain an interstate (i.e., exempt) element. As support, taxpayer points to IC 6-2.1-3-4, which exempts receipts derived from transportation charges "if the transportation is an initial, intermediate, or final link in the interstate transportation of...property."

Analogies aside, taxpayer is not receiving income from the provision of transportation services – interstate or otherwise. Taxpayer derives its income from grain sales. When taxpayer sells grain to a resident buyer, the sale is properly characterized as an intrastate transaction – with receipts to be included in taxpayer's Indiana gross income.

**FINDING**

Regarding taxpayer's sales to out-of-state buyers – sales in which the grain was transported in railcars leased to these buyers – taxpayer's protest is sustained. However, for sales made to the Indiana buyer, but shipped to the buyer's out-of-state customers, taxpayer's protest is denied.